IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24394 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPBHAI CHHOTUBHAI VASAVA - Petitioner(s)
Versus
STATE OF GUJARAT THRO. THE SECRETARY. & 2 - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Petitioner(s) : 1,
MR HEMANG PARIKH A.G.P. for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 25/07/2007

ORAL JUDGMENT

1. The petitioner was granted mining lease by order dated 14th August, 2006 for excavating black trap minor mineral for a period of ten years in village Jespor,

Taluka Jaghadia. The said lease was terminated at the 11th day by order dated 25th August, 2006. Surprisingly enough and it is an admitted position that the petitioner was not served with any show cause notice before terminating the lease by order dated 25th August, 2006 by respondent no. 3. The impugned order even does not specify the reason why the lease has been terminated within such a short period.

2. I have heard Mr. A.R. Majmudar learned advocate for the petitioner and Mr. Hemang Parikh learned A.G.P., for the respondents. Mr. Majmudar has submitted that one cannot come across any better case of gross violation of principles of natural justice than the present one. In his submission the petitioner is also not aware for what reason, respondent no. 3 thought it fit to terminate the lease on the 11th day of its issuance. He has, therefore, submitted that the impugned order be quashed and set aside. Mr. Parikh has however, vehemently contested the petition and resisted the submissions of Mr. Majmudar. He has placed extensive reliance on the affidavit-in-reply filed by respondent no. 2. It is submitted by him that for carrying on quarry activity in the land in question, the petitioner was required to obtain prior permission of the concerned Collector, since the land was situated in

tribal area. Mr. Parikh has further submitted that there is alternative remedy available to the petitioner by way of appeal and, therefore, this petition is not maintainable.

3. I have carefully considered the submissions of the learned advocates. I have also perused the record of the petition. According to the respondents lease of the petitioner is terminated solely on the ground that the petitioner had not obtained prior permission of the Collector. The respondents have placed reliance on the provisions of Bombay Land Revenue Code, 1879 to terminate the lease, as also the Circular issued under Section 73AA of the Code dated 30th July, 1982.

3.1. Despite the aforesaid position, it is also very clear that principles of natural justice have not at all been followed by the respondents and in particular, respondent no. 3. Before passing the impugned order, the petitioner could have been served with the show cause notice and he could have been given opportunity of hearing before taking any decision to terminate the lease. That has not been done by respondent no. 3. In that view of the matter, the impugned order suffers from inherent infirmity of not following the principles of

natural justice. It also does not specify the reason why the lease is terminated. That exhibits the non-application of mind. On that count also, it is required to be quashed. When there are inherent defects in the impugned order and particularly that of violation of principles of natural justice, person may not resort to alternative remedy, but may approach this Court under Article 226 of the Constitution of India to challenge the order passed against him and this Court is within its bounds to entertain such petition. This is a settled proposition of law. In view of the same, this petition deserves to be allowed and it is hereby allowed. The impugned order dated 25th August, 2006 passed by respondent no. 3 terminating the lease of the petitioner is hereby quashed and set aside. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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